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Law Alert

To: Firm Clients and Contacts

From: Niesar & Vestal LLP

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Re: **California Law Regulating Automatic Renewal Charges**

A new California law (codified in California Business and Professions Code Sections 17600-17606) recently took effect which requires companies to make greater disclosures to and obtain affirmative consent from consumers prior to charging them under automatic renewal plans, i.e. plans in which a paid subscription or purchasing agreement is automatically renewed at the end of a definite term for a subsequent term. The intent of the law is to end the practice of ongoing charging of consumer credit or debit cards or third party payment accounts without the consumer's explicit consent for ongoing shipments of a product or ongoing deliveries of service. The new law applies to the formation, online or offline, of consumer contracts when services will be continuous or automatically renewed at the end of a definite term. An example is a subscription for delivery of items such as a physical book, where the provider automatically charges the subscription renewal to a credit or debit card. Violation of the statute will convert the provision of goods or services into an "unconditional gift".

Key Points of California Business and Professions Code Sections 17600-17606

Under the new law, prior to completion of the initial order for the automatic renewal service, companies are required to:

- Clearly and conspicuously disclose the terms of the automatic renewal offer in visual proximity (or in the case of an offer conveyed by voice, in temporal proximity) to the request for consent to the offer. Such terms should include information that the subscription will continue until the consumer cancels, a description of the cancellation policy, information about the recurring charges, the length of the renewal term, and the minimum purchase obligation, if any. "Clearly and conspicuously" means that the terms must be presented either in larger type than the surrounding text or in contrasting type,

font, or color from the surrounding text of the same size, or set off from the surrounding text in a manner that clearly calls attention to the terms.

- Obtain a consumer's affirmative consent to the terms of the automatic renewal offer before the consumer is charged.
- Provide a cost-effective, timely and easy to use method for canceling the automatic renewal service, including a toll-free telephone number, email address, or a postal address (only if the company directly bills the consumer).

Either before or after completion of the initial order, companies must provide a confirmation to the consumer that includes the terms of the automatic renewal offer, a description of the cancellation policy, information on how to cancel, and, if the offer includes a free trial, the fact that the consumer may cancel before being charged, in a manner that is capable of being retained by the consumer.

In the case of a material change in the terms of the automatic renewal offer, the company must provide consumers with clear and conspicuous notice of the change and information about how to cancel prior to implementation of the change in a manner that is capable of being retained by the consumer.

The new law only applies to goods or services sold to consumers, defined as any individual who seeks or acquires any goods or services for personal, family or household purposes. Therefore, if goods or services are sold for strictly business purposes on an ongoing automatic renewal basis, the provider of the goods or services would not need to comply with this law. Other providers of goods or services exempt from the new law include any business regulated by the California Public Utilities Commission, the Federal Communications Commission or the Federal Energy Regulatory Commission, any entity regulated by the California Department of Insurance, alarm company operators, and banks, credit unions and other financial institutions licensed under state or federal law.

If a company sends any goods, merchandise or products to a consumer under an automatic renewal agreement without first obtaining the consumer's affirmative consent, the goods are deemed an unconditional gift. A violation of the statute may also subject a company to all available civil remedies pursuant to California's Business and Professions Code, which include civil penalties not to exceed two thousand five hundred dollars (\$2,500) for each violation, and actions for injunction (with civil penalties not to exceed six thousand dollars (\$6,000) for each violation of an injunction). Companies that can show they have complied with the provisions of the statute in good faith will not be subject to civil remedies.

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